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E.O. 12958: DECL: 08/27/2018
TAGS: [NATO](#) [PREL](#) [EUN](#)
SUBJECT: DEMARCHE: U.S. WILL NOT SIGN THE NATO
MEDITERRANEAN DIALOGUE SOFA BUT OFFERS AN ALTERNATIVE

REF: A. (A) EMAIL
 1B. READOUT OF NATO LEGAL EXPERTS MEETING
 1C. JULY 11
 1D. 2008 (BAEZ-EUR/RPM/PMP) (B) DRAFT NATO
 MEDITERRANEAN DIALOGUE SOFA (2005)

Classified By: EUR DAS Nerissa Cook, Acting, Reasons 1.4(B) and (D)

1. (C) This is an action request for all NATO Posts and Embassy Tel Aviv to demarche relevant Foreign Ministry legal and policy offices at appropriate levels prior to the September 2 Meeting of NATO Legal Advisors. We would appreciate information on any comments or replies received; please slug for Shinagel in EUR/RPM and Baez at USNATO.

2. (C) Background: Despite consistent USG opposition since 2003 to being a party to a proposed multilateral and reciprocal Mediterranean Dialogue (Med-D) SOFA for the reasons identified in para 3, USNATO reports (ref A) that a number of Allies and the NATO International Staff still fail to accept or understand USG redlines concerning existing draft language on reciprocity and jurisdictional language (ref B). Points in para 3 are intended to clarify the USG position for NATO Allies and Israel (see para 3,F for discussion), while at the same time offering a good faith alternative to the current draft multilateral SOFA in the form of a template Exchange of Letters (EoL). We believe that a good number of Allies share our concerns but have thus far remained silent. The next meeting of the NATO Legal Advisors will take place on September 2; in order to have a more productive conversation, we seek posts assistance to deliver this message in advance of that meeting. End Background.

Demarche Points and Background

3. (SBU) There are three areas in the Mediterranean Dialogue SOFA that are problematic for the United States: reciprocity; inadequate protections and shared jurisdiction; and harmful precedent.

1A. Reciprocity:

-) (SBU) The USG does not desire to enter into a reciprocal SOFA agreement with non-Allied countries that would entitle non-Allied military and civilian personnel to treatment similar to that provided to NATO Allies and NATO aspirant

countries.

-- (C/REL NATO and Israel) Background: In order to enter into a multilateral, reciprocal SOFA as proposed for Med-D countries, the USG would need to seek Senate advice and consent. Even if such a treaty could be ratified, it likely would necessitate the alteration of certain U.S. domestic laws. The USG has not entered into a reciprocal SOFA since the NATO Partnership for Peace (PfP) SOFA, which was made possible through special legislative authority. Even with countries with which the United States has far closer defense relationships (e.g., Australia, South Korea, and Japan) than with the Med-D countries, the USG has declined to negotiate reciprocal SOFAs on a bilateral basis.

B. Inadequate Protections and Shared Jurisdiction:

-) (SBU) The USG does not/not consider the proposed Med-D SOFA to provide adequate levels of protection for its forces deployed overseas. It is USG policy to seek to maximize U.S. jurisdiction over DoD military and civilian personnel, and the shared jurisdiction construct found in the Med-D SOFAs is inconsistent with that policy.

C. Harmful Precedent:

-) (SBU) The USG negotiates SOFAs globally. Therefore, we must view the Med-D SOFA through the prism of ongoing and future U.S. bilateral SOFA negotiations around the world. The United States is careful to ensure that any SOFA to which it may become a party or that would apply to U.S. forces in one location does not set an adverse precedent to securing necessary protections for U.S. forces serving at other locations elsewhere overseas.

D. Sufficiency of an Exchange of Letters (EoL) vice an All-Encompassing SOFA:

-- (SBU) Not every NATO exercise/exchange/activity involves all 26 Allies and 7 Med-D partners. For those Allies and partners that wish to participate in specific events at specific times with specific assets, a model EoL text is more flexible and appropriate. An EoL can be tailored; it can be concise for small, short-term deployments or it can be a comprehensive, enduring agreement that would apply to future activities between the two countries.

-- (SBU) Background: We have indicated previously that it is not the USG's intent to stop Allies from pursuing a reciprocal, shared jurisdiction SOFA with Med-D countries, if that is what is desired. However, the USG is not interested in becoming a party to such a SOFA absent the complete protections noted above. The USG has therefore urged Allies to focus on development of a model EoL that could be concluded, in the interim, for NATO exercises with Med-D countries on a bilateral basis. Such an exchange of letters would be much more expedient than drawn-out multinational negotiations and could, in the long run, serve as a better model for these types of activities.

E. U.S. Commitment to NATO's Global Partnership:

-) United States, reluctance to conclude a NATO SOFA with Med-D partners does not affect our strong commitment to partnership. The U.S. remains a strong advocate for increasing NATO partnership engagement and opportunities for all partners, especially Med-D nations. Our commitment to the Med-D has led us to seek an EoL alternative, which we believe is more than adequate to meet the desires of our Med-D partners to participate in all desired NATO activities and exercises.

F. Additional Point for Embassy Tel Aviv:

-) (C/REL ISRAEL) Israel has repeatedly advocated at NATO and in Washington for the Med-D SOFA, stating that it is vital to secure Israeli participation in NATO exercises and activities. Washington respectfully disagrees with the

premise that the Med-D SOFA is necessary for this purpose. We request that Israel accept the U.S. position as describe. The best means for Israel and other Med-D countries to demonstrate their relations with NATO is through active participation in NATO activities. The EOL is fully sufficient for that purpose, and we urge the Israeli MFA and MoD to consider seriously our EoL alternative and cease their advocacy efforts in Brussels and Washington.

-- (C) Background: We had long suspected that Israel as well as other Med-D countries, really desire the Med-D SOFA for its symbolic prestige and status rather than its necessity to engage in NATO activities.

Proposed Med-D SOFA EoL

¶4. (U) The below &model EoL8 has been shared with Allies on several occasions most recently at the April 14 Meeting of NATO Legal Advisors. We ask that Allied policy and legal representatives re-examine our proposed text prior to the next meeting in Brussels on September 2:

¶A. (Complimentary Opening) and has the honor to refer to recent discussions between representatives of our two Governments regarding issues related to military and civilian personnel of the (proposing country) who may be temporarily present in (host country) in connection with mutually agreed activities including (e.g., humanitarian relief, joint exercises and training, contingency operations).

¶B. As a result of these discussions, the Embassy proposes that such personnel be accorded the status equivalent to those accorded to that accorded the administrative and technical staff of a diplomatic mission under the Vienna Convention on Diplomatic Relations of April 18, 1961; that such personnel may enter and exit (host country) with (proposing country) identification and with collective movement or individual travel orders; that (host country) accept as valid all professional licenses issued by (proposing country) or its political subdivisions to (proposing country) personnel for the provision of services to authorized personnel; and that (host country) authorities accept as valid, without a driving test or fee, driving licenses or permits issued by the appropriate (proposing country) authorities to (proposing country) personnel for the operation of vehicles.

¶C. The Embassy further proposes that the Government of (host country) recognize the particular importance of disciplinary control by (proposing country) authorities over their personnel and, therefore, authorize the Government of (proposing country) to exercise criminal jurisdiction over (proposing country) personnel while in (host country).

¶D. The Embassy further proposes that (proposing country) personnel be authorized to wear uniforms while performing official duties and to carry arms while on duty if authorized to do so by their orders; that (proposing country) personnel not be liable to pay any tax or similar charge assessed within (host country); and that the Government of (host country) accord duty free importation and exportation as well as exemption from internal taxation on products, property, equipment, supplies, materiel, technology, training, and services imported into or acquired in (host country) by of for the Government of (proposing country) in connection with activities under this Agreement. Vessels, vehicles and aircraft owned or operated at the time exclusively for the Government of (proposing country) not be subject to the payment of landing or port fees, pilotage, navigation, overflight, or parking charges, terminal fees, lighterage or harbor dues, or overland transit fees. While in (host country), the Government of (proposing country) shall pay reasonable charges for services requested and received. Aircraft and vessels of the Government of (proposing country) shall be free from boarding and inspection.

¶E. Finally, the Embassy proposes that the Parties waive any and all claims (other than contractual claims) against each other for damage to, loss, or destruction of the other's property or injury or death to personnel of either Party's armed forces or their civilian personnel arising out of the performance of their official duties in connection with activities under this Agreement. Claims by third parties for damages or loss caused by (proposing country) personnel shall be resolved by the Government of (proposing country) in accordance with (proposing country) laws and regulations.

¶F. If the foregoing is acceptable to the Government of (host country), the Embassy proposes that this note, together with the Ministry's reply to that effect, shall constitute an agreement between the two Governments, which shall enter into force on the date of the Ministry's reply. (Complimentary Closing).

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